TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1916

No. [redacted] 170

THE SANTA FE PACIFIC RAILROAD COMPANY, APPELLANT,

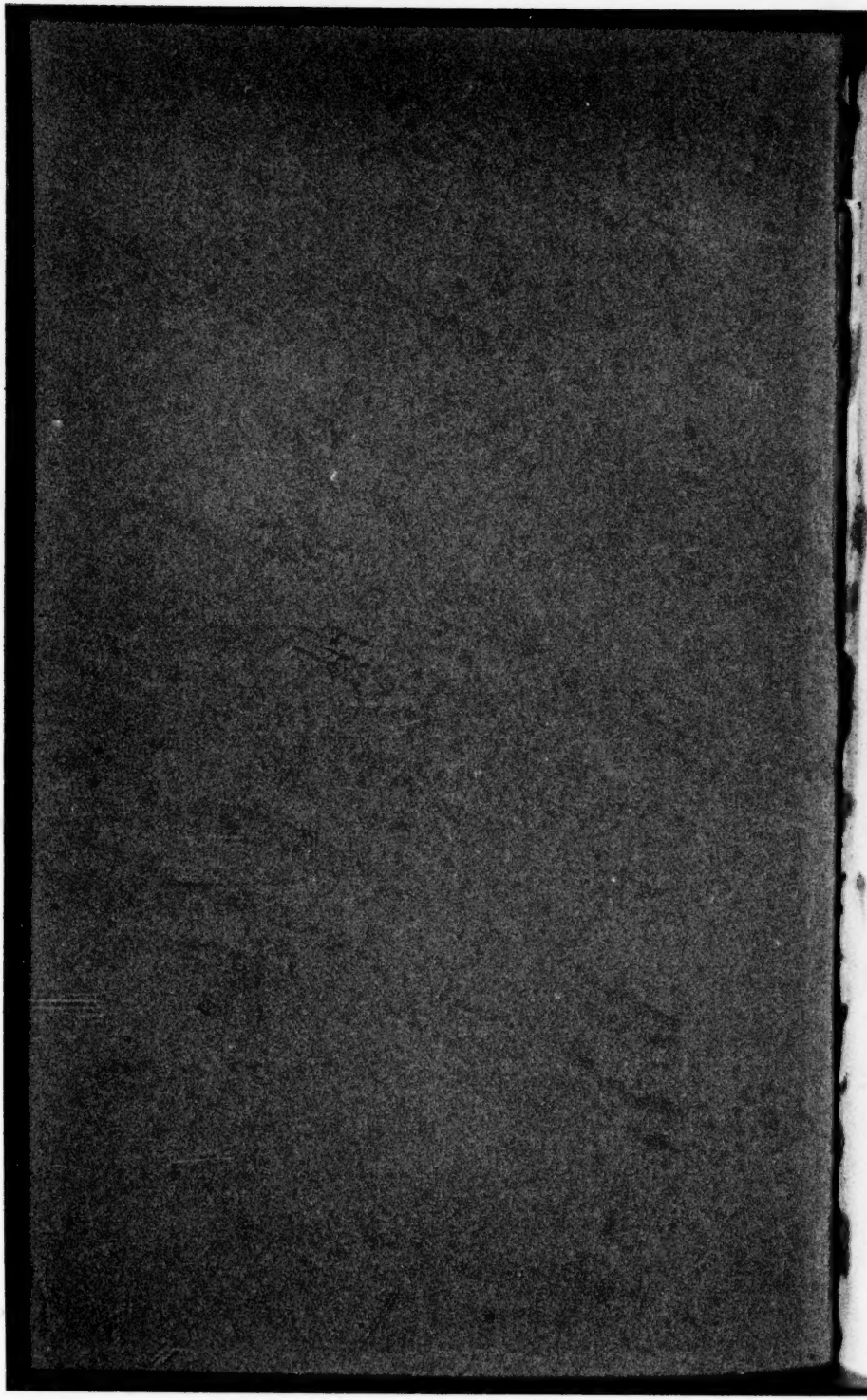
vs.

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JUNE 17, 1916.

(24,903)



(24,802)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 519.

THE SANTA FE PACIFIC RAILROAD COMPANY, APPELLANT,

vs.

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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1 In the Court of Appeals of the District of Columbia.

No. 2763.

THE SANTA FE PACIFIC RAILROAD COMPANY, a Corporation,
Appellant,
vs.
FRANKLIN K. LANE, Secretary of the Interior.

Supreme Court of the District of Columbia.

In Equity. No. 32913.

THE SANTA FE PACIFIC RAILROAD COMPANY, a Corporation,
Plaintiff,
against
FRANKLIN K. LANE, Secretary of the Interior, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Bill.

Filed September 17, 1914.

In the Supreme Court of the District of Columbia.

In Equity. No. 32913.

THE SANTA FE PACIFIC RAILROAD COMPANY, a Corporation,
Plaintiff,
against
FRANKLIN K. LANE, Secretary of the Interior, Defendant.

To the Supreme Court of the District of Columbia, Holding an Equity Court:

Your orator complains and says:

The Santa Fe Pacific Railroad Company is a corporation incorporated under and in accordance with an Act of Congress ap-
2 proved March 3, 1897, and brings this bill of complaint against Franklin K. Lane, a citizen of the State of California, residing in the District of Columbia, Defendant:

1. That at the time of the filing of this bill the defendant, Franklin K. Lane, was and he still is Secretary of the Interior and as such has charge of the administration of the laws of the United States relating to the public lands, including administration of all grants made by Congress including any portion thereof, and is sued in his official capacity as such Secretary of the Interior, as hereinafter set forth:

2. That by act of Congress approved July 27, 1866, (14 Stats., 292), provision was made for the incorporation of the Atlantic and Pacific Railroad Company, and by the 3rd Section of said Act a grant was made of lands in the following words:

"And be it further enacted, That there be, and hereby is, granted "to the Atlantic and Pacific Railroad Company, its successors and "assigns, for the purpose of aiding in the construction of said rail- "road and telegraph line to the Pacific coast, and to secure the safe "and speedy transportation of the mails, troops, munitions of war, "and public stores, over the route of said line of railroad and its "branches, every alternate section of public land, not mineral, "designated by odd numbers, to the amount of twenty alternate "sections per mile, on each side of said railroad line, as said com- "pany may adopt, through the Territories of the United States, "and ten alternate sections of land per mile on each side of said "railroad, whenever it passes through any state, and whenever, on "the line thereof, the United States have full title, not reserved, "sold, granted, or otherwise appropriated, and free from preemp- "tion or other claims or rights, at the time the line of said road is "designated by a plat thereof, filed in the office of the Commissioner "of the General land office; and whenever, prior to said time any of "said sections or parts of sections shall have been granted, sold, "reserved, occupied by homestead settlers, or preempted, or other- "wise disposed of, other land shall be selected by said company "in lieu thereof, under the direction of the Secretary of the Interior, "in alternate sections, and designated by odd numbers, not more "than ten miles beyond the limit of said alternate sections, and not "including the reserved numbers: Provided that if said route shall "be found upon the line of any other railroad route, to aid in the "construction of which lands have been heretofore granted by the "United States, as far as the routes are upon the same general line, "the amount of lands heretofore granted shall be deducted from the "amount granted by this Act: And provided further, that the rail- "road company receiving the previous grant of land may assign "their interest to said 'Atlantic and Pacific Railroad Company' or "may consolidate, confederate, and associate with said company "upon the terms named in the third and seventeenth sections of "this act: And provided further that all mineral lands be, and the
"same are hereby, excluded from the operation of this act,
3 "and in lieu thereof a like quantity of unoccupied and un-
"appropriated agricultural lands in odd numbered sections "nearest to the line of said road, and within twenty miles thereof, "may be selected as above provided: And provided further, that "the word 'mineral', when it occurs in this act, shall not be held to

"include iron or coal: And provided further, that no money shall "be drawn from the Treasury of the United States to aid in the con- "struction of the said 'Atlantic and Pacific Railroad' ".

3. That by Section 4 of said Act it was provided:

"Sec. 4. And be it further enacted, that whenever said Atlantic "and Pacific Railroad Company, shall have twenty-five consecutive "miles of any portion of said railroad and telegraph line ready for "the service contemplated the President of the United States shall "appoint three commissioners to examine the same, who shall be paid "a reasonable compensation for their services by the company to "be determined by the Secretary of the Interior: and if it shall ap- "pear that twenty-five consecutive miles of said road and telegraph "line have been completed in a good substantial and workmanlike "manner, as in all other respects required by this act, the Com- "missioners shall so report under oath, to the President of the United "States, and patents of lands, as aforesaid, shall be issued to said "company, confirming to said company the right and title to said "land situated opposite to and coterminous with said completed sec- "tion of said road. And from time to time, whenever twenty-five "additional consecutive miles shall have been constructed completed, "and in readiness as aforesaid and verified by said commissioners to "the President of the United States, then patents shall be issued to "said company conveying the additional sections of land as afore- "said, and so on as fast as every twenty-five miles of said road is "completed as aforesaid."

4. That by Section 6 of said act it was provided:

"Sec. 6. And be it further enacted, that the President of the "United States shall cause the land to be surveyed for forty miles "in width on both sides of the entire line of said road after the "general route shall be fixed, and as fast as may be required by "the construction of said railroad; and the odd sections of land "hereby granted shall not be liable to sale or entry or preemption, "before or after they are surveyed, except by said company, as "provided by said act; but the provisions of the act of September, "eighteen hundred and forty-one, granting preemption rights and "the acts amendatory thereof, and of the act entitled, 'An Act "to secure homesteads' to actual settlers on the public domain ap- "proved May twentieth, eighteen hundred and sixty two, shall be "and the same are hereby extended to all other lands on the line of "said road when surveyed, excepting those hereby granted to said "company".

5. That the Atlantic and Pacific Railroad Company was duly organized, as provided for in said Act and duly accepted the grant made by said Act as provided by Section 12 thereof.

6. That the Santa Fe Pacific Railroad Company, a cor-
4 poration incorporated under the Act of Congress approved March 3, 1897, (29 Stats., 622), and plaintiff herein, is the lawful successor of the Atlantic and Pacific Railroad Company and possessed of the grant made to said last named company by the said Act of July 27, 1866, except so far as the same was forfeited by the

Act of July 6, 1886, (24 Stats., 123), and including the certain lands hereinbelow mentioned.

7. That prior to June 25, 1910, the line of road aided by the land grant of July 27, 1866, had been fully constructed, reported upon by Commissioners, and accepted by the President of the United States, as provided for in Section 4 of said Act, and every and all the conditions of said Act had been fully met and performed.

8. That under date of June 23, 1914, the Surveyor General of Arizona made demand upon the Santa Fe Pacific Railroad Company in words and figures, as follows:

"Under date of June 11, 1914, the following demand was made " upon you by the First Assistant Secretary of the Interior: 'Under " and by virtue of the authority conferred upon me by the act of " June 25, 1910, (36 Stats., 834), demand is hereby made upon you " for a deposit. in a proper United States depository to the credit " of the United States of $5,500, which is determined to be a sum " sufficient to pay the cost of the field and office work involved in " surveying the unsurveyed lands granted to the Atlantic and Pa- " cific Railroad Company, within the primary limits of said grant, " in the following townships:

T. 19 N., R. 5 W., G. & S. R. M., Arizona.
T. 19 N., R. 6 W., " " " " " "
fractional T. 19. N., R. 7 W., " " " " " "
T. 20 N., R. 6 W., " " " " " "

Should you neglect or refuse to deposit said sum of $5,500, as hereinbefore required, within ninety days from receipt by you of notice hereof, this Department will notify the Attorney General to the end that he may at once, as provided in said act, commence proceedings to declare a forfeiture of the grant as to the townships enumerated, and to restore the granted lands in the public domain'.

"In view hereof notice is hereby given that unless this office is in receipt of due evidence that the required deposit has been made within ninety days from date of receipt of this notice, the matter will be reported to the Commissioner of the General Land Office.

"In this connection you are advised that the certification of de- " posit need not specify the townships in point, but may read:

" 'On account of surveying, selecting and conveying lands inur- " 'ing to the said Santa Fe Pacific Railroad Company, under its " 'grant, pursuant to the Act of June 25, 1910.' "

9. That immediately on receipt of said demand, to wit, on June 27, 1914, Mr. Howel Jones, Land Commissioner of the Santa Fe Pacific R. R. Co., addressed the following letter to the U. S. Surveyor General, at Phœnix, Arizona:

5 TOPEKA, June 27, 1914.

"Mr. Frank S. Ingalls, U. S. Surveyor General, Phœnix Arizona.

"DEAR SIR: Your letter of June 23rd to the Santa Fe Pacific " Railroad Company was referred to me for my attention. In it " you request a deposit of $5,500. for the survey of township 19 " North, ranges 5, 6 and 7 West, Arizona. It seems to me that this " estimate is unusually high and there must be some conditions con-

"nected with those lands that are different from other surveys we "have had. Here are four townships which would cost $11,000, "making a cost of each township $2,750. Probably the total cost "of the survey will be $5,500, and under the law quoted the Santa "Fe Pacific Railroad Company is only required to deposit one-half "thereof. In any event, I wish you would look over your figures "again and see whether our share of the deposit is $5,500 or only "one-half thereof."

10. That to said letter the U. S. Surveyor General made this following reply:

"Replying to your favor of the 27th instant in which you request "a downward revision of the estimate of $5,000.00 covering the "survey of T. 19 N., R. 5, 6 & 7 W., and T. 20 N., R. 6 W., you "are advised that this office does not recall having made this esti-"mate. The demand made by office letter of the 23rd instant was "purely in compliance with letter "E" from the General Land "Office, dated June 17th, press copy herewith. No information is "available as to whether the estimate in question for field and "office work' was intended to include such items as selecting and "conveying. As far as the actual surveying and work of preparing "the returns is concerned this office is of opinion that the sum of "$5,500.00 called for would cover the entire cost."

11. That your orator is not required under the grant made by Act of July 27, 1866, to pay any part of the cost for surveying or conveying the lands granted. On the contrary, it is by said Act made the duty of the President of the United States to cause the lands granted to be surveyed and to convey them to the Company as the construction of the road progresses, and while the Act of June 25, 1910, under which this demand upon your orator is claimed to be made, has no application to the grant under which your orator lays claim, nevertheless in order to facilitate the adjustment of the grant your orator has heretofore, on demand, made under said Act, advanced the cost of the surveying of its lands under the heretofore uniform administration of said Act by the Secretary of the Interior, based on the proportionate cost of the amount that your orator's lands in any given township bears to the entire cost of surveying of the township, and for that reason your orator sought of the Secretary of the Interior modification of the present demand for deposit for surveying to one-half of the cost of surveying of the townships named, as estimated by the U. S. Surveyor General, that being the maximum amount that might be received by your orator under the grant aforesaid, to which the Secretary of the Interior acting through his First Assistant, as authorized by law, made the following response:

6 "The Department has received and considered your letter, "dated July 23, 1914, relative to the demand made under "the act of June 25, 1910 (36 Stats., 834), upon the Santa Fe "R. R. Co., as successor to the Atlantic and Pacific R. R. Co., for "the deposit of $5,500 which was determined by the Department on "June 11, 1914, 'to be a sum sufficient to pay the cost of the field "and office work involved in surveying the unsurveyed lands

" granted to the Atlantic and Pacific Railroad Company, within the " primary limits of said grant', in certain townships in Arizona.

"It is apparent from your letter that the requirement made of " the Santa Fe Pacific R. R. Co., under authority of said letter of " June 11, 1914, has been misconstrued. It was not the purpose of " the Department to require a deposit for the survey of any lands " except those granted to the Company. It is not now proposed to " survey any of the public lands within the townships specified in " the demand made on the company. It is the judgment of the " Department that the public interest requires the immediate sur- " vey of the railroad lands in those townships, and that the public " interest does not require the survey of the even-numbered sections " in those townships. Under such circumstances, the Department is " clearly of the opinion that the company was properly required to " pay the cost of the field and office work involved in the survey of " its granted lands, even though it be admitted that the cost to the " company would be much less were it deemed proper at this time to " direct the survey of all the lands within the townships named."

12. That the amount demanded of your orator for survey of the townships named is the estimated cost of surveying the entire townships, including both the odd and even numbered sections thereof, and in this respect is a departure from the here-fore uniform administration of the Interior Department under the said Act of June 25, 1910 and all other acts in any wise relating to the survey of land grant lands.

13. That the Santa Fe Pacific Railroad Company thereupon in letter of September 5, 1914, made formal tender to the Surveyor-General of Arizona of one-half of the estimated cost for survey of the entire townships named, which tender he has refused to acknowledge or accept.

14. That the defendant, the Secretary of the Interior, is unlawfully and in excess of any authority granted him, continuing to demand of your orator deposit for survey of not only the granted alternate odd numbered sections within the townships named, but for the survey of the entire townships, and is pressing this demand under penalty of proceedings in forfeiture of your orator's grant, so far as these townships are concerned, if said deposit be not speedily made.

15. Your orator alleges that it has no remedy at law and is remediless except in equity.

Wherefore your orator prays:

That Your Honors grant to your orator your writ of injunction enjoining the defendant, Franklin K. Lane, Secretary of
7 the Interior, as aforesaid, and his successors in office and all persons claiming to act under his authority or control, absolutely to desist and refrain from insisting upon the demand hereinbefore named or from proceeding further thereon until such time as your honors shall appoint and direct and order herein; and that upon such hearing the writ herein prayed be granted and continued until the final determination of this suit; and upon such final hearing be made permanent.

To the end that the defendant may, if he can, show why your orator should not have the relief hereby prayed, and may full, true and perfect answer make, according to the best of his knowledge, remembrance, information and belief, to the several matters hereinbefore averred and set forth, as fully and particularly as if the same were herein repeated paragraph for paragraph and he was thereto specifically interrogated, (but not under oath, an answer under oath being hereby expressly waived) may it please Your Honor to grant unto your orator a writ of subpœna ad respondem issuing out of and under the seal of this Honorable Court, directed to the said defendant, Franklin K. Lane, commanding him to be and appear and make answer unto this bill of complaint, and perform and abide by such order and decree herein as to this Court may seem to be required by the principles of equity and good conscience.

And that your orator may have such other or further relief in the premises as the nature of the circumstances of the case may require.

SANTA FE PACIFIC R. R. CO.,
By HOWELL JONES,
Land Commissioner.

ALEX. BRITTON,
EVANS BROWNE,
F. W. CLEMENTS,
A. A. HOEHLING,
Attorneys for Plaintiff.

CITY OF WASHINGTON,
District of Columbia, ss:

Personally appeared before me on this 16th day of September, 1914, Howel Jones, who, being duly sworn, says that he is Land Commissioner of the Santa Fe Pacific R. R. Co., and that the matter and facts set forth in this bill are true to the best of his knowledge and belief.

HOWEL JONES.

Subscribed and sworn to this 16th day of September, 1914.

ROSWELL W. SNOW, [SEAL.]
Notary Public.

8 *Rule to Show Cause.*

Filed September 17, 1914.

* * * * * * *

Upon consideration the complaint filed herein, and upon application in that behalf made, it is by the Court this 17th day of September, 1914, ordered that Franklin K. Lane, Secretary of the Interior Department, herein show cause to this Court, if any he has, on or before Friday the 2d day of October A. D. 1914, at 10:00 o'clock A. M., why preliminary injunction and restraining order should not issue as prayed in said bill of complaint, provided a copy

of said bill of complaint and of this rule to show cause be served upon said defendant on or before the 21st day of Sept'r A. D. 1914.

ASHLEY M. GOULD, *Justice.*

Marshal's Return.

Served copy of within rule to show cause together with a copy of bill of complaint on Franklin K. Lane, Secretary of the Interior by service on A. A. Jones, acting secretary.

Sept. 17, 1914.

MAURICE SPLAIN, *Marshal.*
C. R. S.

Return to Rule to Show Cause.

Filed September 25, 1914.

* * * * * * *

In response to the rule to show cause why preliminary injunction and restraining order should not issue in the above-entitled case, the defendant says:

1. That the plaintiff has not in, or by, his bill exhibited a cause for relief in equity in that it appears,

a. that the defendant's demand upon the plaintiff was made under and by virtue of an authority and duty imposed upon him by Congress;

b. that the amount demanded was, by law, within his discretion to fix and determine, and that the amount demanded is not shown to be in excess of a sum sufficient to pay the cost of the field and office work involved in surveying the unsurveyed lands granted to the plaintiff or its predecessor in interest;

c. and that even if otherwise, the plaintiff has its remedy by way of defense in any proceeding looking to the forfeiture of its grant.

2. That in essence and effect this bill seeks a review by the court of the action of the Secretary of the Interior in a matter over which, by act of Congress, he has sole and exclusive jurisdiction, and concerning which his functions and actions are wholly discre-

9 tionary and are not subject to control or review by the courts in any direct proceeding for injunction or otherwise; and that if the prayer of the bill be granted will substitute the judgment and discretion of the court for that of the Secretary of the Interior.

3. That, as appears on the face of the bill, the defendants demand for the deposit described in the bill has already been made in the manner and form directed by law and that the consequences and results are fixed and determined by an act of Congress and not by any act to be taken or not to be taken by the defendant.

4. That the specific relief prayed would require the court not only to interfere in the discharge of a duty laid upon the defendant by

act of Congress but, if granted, would amount to a suspension by the court of the operation of that law, in that the plaintiff prays that the defendant be perpetually restrained from "insisting upon the demand hereinbefore named or from proceeding further thereon until such time" as the court "shall appoint and direct and order herein:" the effect being that the defendant must either substitute for his own discretion in executing the law the discretion of the court or else not execute the law at all.

He further states that he has made but one demand upon the plaintiff under the provisions of the act of June 25, 1910, for the deposit of the amount of money required to pay the cost of field and office work involved in surveying the unsurveyed lands described in paragraph 8 of said bill; that said demand was made in manner and form as set forth in said paragraph 8; that he is not required by law to make, and has not made, any further demand in the premises; and that the legal effect and consequences of said demand are fixed by law and not by any further act or inaction on the part of the defandant other than as it will become his duty, under the statute, at the expiration of ninety days from the receipt of said demand by the plaintiff, to inform the Attorney-General of the fact that the deposit has not been made, if that be the fact.

He further denies the allegation contained in paragraph 12 and states the fact to be as set forth in the letter quoted in full in paragraph 11 of said bill.

And to the end that the court may have the entire correspondence between the defendant and the attorney for the plaintiff, defendant avers that the letter signed by the First Assistant Secretary and set forth in said paragraph 11 of the bill, was in response to a letter dated July 25, 1914, signed by Britton & Gray, as attorneys for the Santa Fe Pacific Railroad Company, which said letter was in words and figures as follows:

"Under date of June 23rd last the Surveyor General of Oregon made demand under the act of June 25, 1910, 36 Stats. 834, upon the Santa Fe Pacific R. R. Co., as successor to the Atlantic & Pacific R. R. Co., for the deposit of $5,500.00 'which is determined to be a sum sufficient to pay the cost of the field and office work involved in surveying the unsurveyed lands granted to the Atlantic & Pacific Railroad Company, within the primary limits of said grant, in the following townships:

T. 19 N., R. 5 W., G. & S. R. M., Arizona
T. 19 N., R. 6 W., G. & S. R. M., Arizona
Fractional T. 19 N., R. 7 W., G. & S. R. M., Arizona.
T. 20 N., R. 6 W., G. & S. R. M., Arizona.

This demand is stated to have been made under directions contained in First Assistant Secretary Jones' letter, dated June 11, 1914.

In answer to inquiry made of the Surveyor General, he reports in letter of June 30th to Mr. Howell Jones, Land Commissioner, Santa Fe R. R. Co., copy enclosed, that the sum called for will cover actual surveying and work of preparing returns on the entire townships named.

In view of this report we have to request that the demand be reduced to one-half the amount called for. The basis for our request is as follows:

The act of June 25, 1910 (supra), merely authorized the demand for 'a sum sufficient to pay the cost of surveying, * * * any of the unsurveyed lands granted to such company,' etc.

By the act of July 31, 1876, (19 Stats. 102-121), it was provided, 'that before any land granted to any railroad company by the United States shall be conveyed to such company * * * there shall first be paid into the Treasury of the United States the cost of surveying, selecting, and conveying the same by the said company or person in interest.'

It will thus be seen that while under the act of 1876 the Company was required to pay for the surveying of the lands granted to it, before same could be conveyed, the act of 1910 authorized demand for the deposit of an amount estimated as sufficient to pay cost of surveying any of the unsurveyed lands granted.

It should be noticed, however, that the later act indicated no purpose to increase the call upon the Company so as to embrace other than the lands granted to the company, but merely authorized an estimate of this amount, the lands being unsurveyed, in place of the known amount after survey, provided for in the act of 1876.

The Act of 1876 has been uniformly administered as merely requiring the company to pay for the actual amount of lands granted and conveyed to the company on account of the grant.

The regulations of 1879, Land Office report for that year, page 126, 2nd Vol. Copp's Land Laws, page 715, contemplated the payment of the costs of the survey at the time of listing or selection under the grant. This course, however, has not been followed for many years, due to the fact that it required payment for survey of lands never conveyed, and the practice has been for many years to make call upon the company whenever a clear list is prepared and approved for the required payment before conveyance is made.

Under the entire practice, however, since the enactment of 1876, the cost has been arrived at through calculation in the proportion of the amount granted to the entire area surveyed in the given township.

We do not question the right of the Secretary to estimate the amount required to meet the costs of the survey of the Com-
11 pany's lands in any given township, but we do says that this estimate must be made in good faith to meet the demands of the grant and no more.

It was at once apparent that the estimate here was in excess of the requirements. The grant in the extreme case covers only one-half of the lands in the townships named, the grant being limited to these sections designated by the odd numbers. Therefore, the estimate in the extreme must be limited to the extreme of the grant.

We assume that the demand was directed on an estimate given by officials of the General Land Office, and that the Secretary, in authorizing the demand, was not informed respecting its conse-

quences, and if so, that it was not only a reversal of the entire course of administration under the law of 1876, but also of the act of 1910, which as before stated, does not change or purport to change the amount which the company is required to pay for the survey of its lands.

In this connection, it may not be inappropriate to ask attention to the decision of the Supreme Court in New Orleans Pacific Ry. C. v. U. S. 124 U. S., 125, wherein payment for surveys under the act of 1876 was sustained merely on the ground that the Company was in default at the time that act was passed, and for that reason Congress was authorized to attach a new condition. There was no default existent at time Act of 1910 was passed, so that it may be questioned whether the power existed to make further conditions on the Santa Fe grant.

The present condition of financial affairs, especially in railroad circles, makes the question of demands in this particular more important than is generally appreciated.

We earnestly ask for modification in the amount demanded to meet alone the estimated costs of the lands possible to receive under the grant in these townships."

Whereupon said letter of July 25, 1914, was written and addressed and delivered to said Britton & Gray; and thereafter, on August 6, 1914, said Britton & Gray again wrote a letter to the defendant, which letter is in words and figures as follows:

"Referring to our letter of July 25th last, in the matter of the demand under the act of June 25, 1910 (36 Stats. 834), upon the Santa Fe Pacific Railroad Company for the deposit of $5,500.00 for the survey of its lands within Tps. 19 N., Ranges 5 and 6 W., 19 N., Range 7 W. and 20 N., Range 6 W., G. and S. R. M., Arizona, permit us to call attention to the fact that these lands are all within the Prescott National Forest Reserve, and if the United States wants to administer the territory covered by this reservation as a whole, it is suggested that the consequence of this survey should receive consideration. As this feature has not heretofore been recited in any of the correspondence, it was thought but advisable to bring it to your attention."

And on August 18, 1914, in reply thereto, the First Assistant Secretary wrote and caused to be delivered to said Britton & Gray a letter in words and figures as follows:

"Receipt is acknowledged of your letter of August 6, suggesting in connection with letter to you of July 25, in the matter of
12 demand upon the Santa Fe Pacific Railroad Company for deposit for survey of certain lands in Arizona, that the consequences of the survey should receive consideration in view of the fact that the lands are all within the Prescott National Forest.

"The Department wishes to express its thanks for your courtesy in submitting this suggestion. The matter has been finally considered, however, and the action heretofore taken will not be deviated from."

And now, having made complete return to the rule to show cause

herein issued, he prays that the same may be discharged, and that he may be relieved from further obligation to make answer thereto.

FRANKLIN K. LANE,
Secretary of the Interior,
By His Attorneys, PRESTON C. WEST, *Solicitor;*
C. EDWARD WRIGHT,
Assistant Attorney.

DISTRICT OF COLUMBIA, *ss:*

I, C. Edward Wright, Assistant Attorney of Department of the Interior, on oath depose and say that I am attorney for the defendant in the above-entitled cause; that I have examined the files of the Department of the Interior relating to the matters set forth in plaintiff's bill and am acquainted with the facts set forth in the foregoing return to the rule to show cause; and that the same are true.

C. EDWARD WRIGHT.

Subscribed and sworn to this 25th day of September, 1914.
Before me:
[SEAL.] W. BERTRAND ACKER,
Notary Public for the District of Columbia.

Motion to Dismiss.

Filed September 25, 1914.

* * * * * * * * *

Comes now the defendant by his attorneys and moves to dismiss the bill herein filed; and for cause shows:

1. That the plaintiff has not in, or by, his bill exhibited a cause for relief in equity in that it appears,

a. that the defendant's demand upon the plaintiff was made under and by virtue of an authority and duty imposed upon him by Congress;

b. that the amount demanded was, by law, within his discretion to fix and determine, and that the amount demanded is now shown to be in excess of a sum sufficient to pay the cost of the field and office work involved in surveying the unsurveyed lands granted to the plaintiff or its predecessor in interest;

c. and that even if otherwise, the plaintiff has its remedy by way of defense in any proceeding looking to the forfeiture of its
13 grant.

2. That in essence and effect this bill seeks a review by the court of the action of the Secretary of the Interior in a matter over which, by act of Congress, he has sole and exclusive jurisdiction, and concerning which his functions and actions are wholly discretionary and are not subject to control or review by the courts in any direct proceeding for injunction or otherwise; and unless dismissed will substitute the judgment and discretion of the court for that of the Secretary of the Interior.

3. That, as appears on the face of the bill, the defendant's demand for the deposit described in the bill has already been made in the manner and form directed by law and that the consequences and results are fixed and determined by an act of Congress and not by any act to be taken or not to be taken by the defendant.

4. That the specific relief prayed would require the court not only to interfere in the discharge of a duty laid upon the defendant by act of Congress but, if granted, would amount to a suspension by the Court of the operation of that law, in that the plaintiff prays that the defendant be perpetually restrained from "insisting upon the demand hereinbefore named or from proceeding further thereon until such time" as the court "shall appoint and direct and order herein:" the effect being that the defendant must either substitute for his own discretion in executing the law the discretion of the court or else not execute the law at all.

Wherefore, he prays that the bill be dismissed, with his reasonable costs, and that he may be permitted to go hence without day.

FRANKLIN K. LANE,
Secretary of the Interior,
By His Attorneys, PRESTON C. WEST, *Solicitor;*
C. EDWARD WRIGHT,
Assistant Attorney.

To Alexander Britton, Evans Browne, F. W. Clements, and A. A. Hoehling, Attorneys for the Santa Fe Railroad Company:

Take notice that the foregoing will be for hearing on the 2d day of October, 1914.

PRESTON C. WEST, *Solicitor;*
C. EDWARD WRIGHT,
Assistant Attorney,
Attorneys for the Secretary of the Interior.

Service acknowledged this 25th day of September, 1914.

F. W. CLEMENTS,
Attorney for Plaintiff.

Opinion.

Filed November 2, 1914.

* * * * * * * * *

The plaintiff asks for a writ of injunction enjoining the defendant, Franklin K. Lane, Secretary of the Interior, absolutely
14 to desist and refrain from insisting upon a demand made by him for a deposit by the plaintiff "in a proper United States Depository to the credit of the United States of $5,500, which is determined to be a sum sufficient to pay the cost of the field and office work involved in surveying the unsurveyed lands granted to the Atlantic and Pacific Railroad Company" (the plaintiff's predecessor) "within the primary limits of said grant" in certain townships in

the State of Arizona. As a part of the demand the plaintiff was notified as follows:—

"Should you neglect or refuse to deposit said sum of $5,500 as hereinbefore required, within ninety days from receipt by you of notice hereof, this Department will notify the Attorney General to the end that he may at once, as provided in said Act," (Act of June 25, 1910, 36 Stats. 834) "commence proceedings to declare a forfeiture of the grant as to the townships enumerated and to restore the granted lands in the public domain."

The plaintiff alleges that it is not required by law to pay any part of the cost of surveying or conveying the lands granted to its predecessor or that if so liable, it is only for one-half the estimated cost for the survey of the townships named in the demand and that on September 4, 1914, it made formal tender of one-half of such estimated cost. It alleges further that the Secretary of the Interior is unlawfully and in excess of any authority granted him continuing to demand a deposit for survey of not only the granted alternate odd-numbered sections within the townships named, but for the survey of the entire townships and is pressing this demand under penalty of a proceeding for forfeiture of the grant so far as those townships are concerned, if said deposit be not speedily made. The plaintiff alleges that it has no remedy at law and is remediless except in equity.

The defendant moves to dismiss the bill on the ground that the plaintiff has not by its bill exhibited a cause for relief in equity. The grounds specified are substantially two:—

First. That the Secretary is acting by virtue of an authority and duty imposed upon him by Congress, giving him sole and exclusive jurisdiction within which his functions and actions are wholly discretionary and not subject to control or review by the courts in direct proceedings for an injunction or otherwise.

Second. That the act of Congress under which he is proceeding provides a remedy for the plaintiff which is exclusive of all other remedies.

The Act of June 25, 1910, in pursuance of which the defendant has made the demand for a deposit, provides among other things that the deposit shall be made within ninety days from demand; that the Secretary shall determine and specify in the notice or demand the amount of the required deposit; that the amount deposited shall be disbursed for the surveying, including office and field work, selection and conveyance of the lands granted and designated in the notice, and that in the event the money deposited shall exceed the cost of the surveys the excess thereof shall be repaid to the corporation so depositing the same.

15 Section 2 of the act further provides that if the demand is not complied with

"the rights, title and interests of such company, and all those claiming, by, through, or under it, in and to the unsurveyed lands designated in the notice of the Secretary, as aforesaid, shall cease and forfeit to the United States; and the Secretary of the Interior shall

notify the Attorney General, who shall at once commence proceedings to declare the forfeiture and to restore the lands forfeited to the public domain."

The time within which the deposit could be made under the act has expired and it is now the duty of the Secretary of the Interior to notify the Attorney General of that fact.

In United States vs. Repentigny, 5 Wallace, 211 at 268, the court says:—

"The mode of asserting or of assuming a forfeited grant is subject to the legislative authority of the Government,"

and the method having been fixed by Congress a court of equity will not interfere to prevent the institution of proceedings so provided for.

Shoomaker vs. Entwistle, 3 Appeals, 252 Brown's Appeal, 66 Pa. St., 155.

If the court should undertake to decide the merits of the plaintiff's contention in this suit and should find against it the matter would not be settled, as it would still be the duty of the Attorney General upon notice from the Secretary of the Interior to institute proceedings as directed by Congress, so that two suits instead of one would be required to settle the controversy.

If the plaintiff had made a deposit under protest it could have sued to recover the amount so deposited.

New Orleans Pacific R. Co. vs. U. S. 124 U. S. 124.

It elected not to do so, however, and its rights can now be adjudicated in the proceedings provided for. Those proceedings may be in Equity, Brewster vs. Lanyon Zinc Co. 140 Fed. Rep. 801, or the Attorney General may proceed as indicated in Atlantic and Pacific R. Co. vs. Mingus—165 U. U. 413 at 430.

At any rate, it was clearly the intention of Congress in providing that proceedings should be taken to give an opportunity to the person claimed to be in default to prove all the facts necessary to show that there would be no forfeiture. Perhaps Congress had in mind what was said in Farnsworth et al vs. Minn. & Pacific R. R. Co. 92 U. S. 49 at page 67 namely:—

"The only inconvenience resulting from any mode other than by judicial proceedings is that the forfeiture is thus left open to legal contestation, when the property is claimed under it, as in this case, against the original holders."

In the view taken of the case as above indicated it is unnecessary to decide any of the other contentions of the parties.

The bill will be dismissed and the rule discharged.

WALTER I. McCOY, *Justice.*

16 *Decree.*

Filed October 31, 1914.

* * * * * * * * *

This cause came on to be heard on the defendant's motion to dismiss the bill herein filed and upon the return to the rule to show cause why temporary injunction should not issue, and was argued by counsel; and thereupon upon consideration thereof, it is this 31st day of October, 1914,

Adjudged, ordered, and decreed that the rule herein issued be, and the same is hereby, discharged, and that the bill herein filed be, and the same is hereby dismissed, with costs to the defendant to be taxed by the clerk.

By the Court:

WALTER I. McCOY,
Associate Justice.

Whereupon plaintiff, in open court, prays an appeal from the above decree, and the same is hereby allowed; and the bond on appeal is hereby fixed at $100 or a deposit of $50 in lieu thereof.

WALTER I. McCOY,
Associate Justice.

Memorandum.

November 6, 1914.—Fifty Dollars ($50) deposited in lieu of appeal bond.

Assignment of Errors.

Filed November 6, 1914.

* * * * * * * * *

The errors assigned by the appellant herein are as follows, to wit:

1. That the Supreme Court of the District of Columbia, as appears by its opinion in said cause, erred in failing to find and hold that the Santa Fe Pacific Railroad Company was not required by law to pay any part of the costs of surveying, selecting and conveying the lands granted by the Act of July 27, 1866, 14 Stats. 292.

2. That the Supreme Court of the District of Columbia, as appears by its opinion in said cause, erred in failing to find and hold that the Santa Fe Pacific Railroad Company, if required by law to pay any part of the costs respecting the surveying, selecting and conveying of the lands granted by the Act of July 27, 1866, supra, was only required to make such payment (A) after specific sections or parts of sections in the townships named had been determined to have been granted by said Act of July 27, 1866, and (B) in amount equal to the expense incident to the Surveying, selecting and conveying of the specific section and parts of sections granted.

3. That the Supreme Court of the District of Columbia,
17 as appears by its opinion in said cause, erred in failing to find and hold that the Act of June 25, 1910, 36 Stats. 834, under which the defendant demanded of the plaintiff the deposit of a large sum of money, has no application to the grant made by the Act of July 27, 1866, supra.

4. That the Supreme Court of the District of Columbia, as appears by its opinion in said cause, erred in failing to find and hold that even if said Act of June 25, 1910, supra, has any application to the grant made by the Act of July 27, 1866, that the Santa Fe Pacific Railroad Company is liable at the most for only one-half of the cost for the surveying of the townships named, and that it has, therefore, made due tender of the full amount which might be required of it under the said Act of June 25, 1910, supra.

5. That the Supreme Court of the District of Columbia, as appears by its opinion in said cause, erred in failing to find and hold that the demand by the defendant, complained of in this action, is in excess of any authority granted, is arbitrary, unusual, and results in casting a cloud upon the title of the plaintiff in and to the odd-numbered sections within the townships named under the grant made by the Act of July 27, 1866, supra.

6. That the Supreme Court of the District of Columbia, as appears by its opinion in said cause, erred in its finding that "if the plaintiff had made a deposit under protest, it could have sued to recover the amount so deposited," and in assigning the same as a reason for the conclusion reached in said opinion, dismissing plaintiff's bill.

7. That the Supreme Court of the District of Columbia, as appears by its opinion in said cause, erred in assuming that a suit by the United States is necessary in order to cloud the title of the plaintiff, and that the matters litigated in this action can be plead in answer to the suit of the United States, and in assigning the same as a reason for denying the plaintiff relief in this action as against the unlawful, unusual and arbitrary demand of the defendant.

8. That the Supreme Court of the District of Columbia, as appears by its opinion, erred in dismissing plaintiff's bill and discharging the rule issued thereon, in effect holding that the plaintiff has full and adequate remedy aside from this action.

9. That the Supreme Court of the District of Columbia, as appears from its opinion, erred in failing to grant to the plaintiff relief as against the unlawful, unusual and arbitrary demand of the defendant, herein complained of, which clouds the title of the plaintiff to lands granted it by the Act of July 27, 1866, supra, and acts amendatory thereof.

ALEX. BRITTON,
EVANS BROWNE,
F. W. CLEMENTS,
A. A. HOEHLING, JR.,
Att'ys for Plaintiff.

18 *Designation of Record.*

Filed November 6, 1914.

* * * * * * *

The Clerk will please make up the record for appeal in the above-entitled cause, and include therein the following:

1. Original bill of complaint.
2. Rule to show cause issued thereon.
3. Return of defendant to said rule.
4. Motion of defendant to dismiss the bill of complaint.
5. Opinion of court, discharging rule to show cause, and dismissing bill of complaint.
6. Final decree, together with notation of appeal in open court, and fixing penalty of bond, or amount of cash deposit, on appeal.
7. Memorandum as to deposit of cash amount on appeal.
8. Assignment of errors by plaintiff.
9. Designation of record.

ALEX. BRITTON,
EVANS BROWNE,
F. W. CLEMENTS,
A. A. HOEHLING, JR.,
Attorneys for Plaintiff.

Service of copy of the above Designation of Record on Appeal acknowledged, this 6 day of November, 1914.

PRESTON C. WEST,
Attorney for Defendant.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 32, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 32913 in Equity, wherein The Santa Fe Pacific Railroad Company, a corporation, is Plaintiff and Franklin K. Lane, Secretary of the Interior, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 9th day of December, 1914.

[Seal Supreme Court of the District of Columbia.] Y

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2763. The Santa Fe Pacific Railroad Company, a corporation, appellant, vs. Franklin K. Lane, Secretary of the Interior. Court of Appeals, District of Columbia. Filed Dec. 9, 1914. Henry W. Hodges, clerk.

19 Tuesday, April 6th, A. D. 1915.

No. 2763.

THE SANTA FE PACIFIC RAILROAD COMPANY, a Corporation, Appellant,
vs.
FRANKLIN K. LANE, Secretary of the Interior.

The argument in the above entitled cause was commenced by Mr. Alexander Britton, attorney for the appellant, and was continued by Mr. Preston C. West, attorney for the appellee, and was concluded by Mr. F. W. Clements, attorney for the appellant. On motion the appellant is allowed to file additional authorities herein if so advised.

20 Court of Appeals of the District of Columbia.

No. 2763.

THE SANTA FE PACIFIC RAILROAD COMPANY, a Corporation, Appellant,
v.
FRANKLIN K. LANE Secretary of the Interior, Appellee.

Opinion.

Mr. Justice ROBB delivered the opinion of the Court:

This is an appeal from a decree in the Supreme Court of the District dismissing appellant's bill to restrain the appellee, the Secretary of the Interior, from insisting upon his demand that the appellant deposit $5,500, which the Secretary has determined will be required to pay the cost of the field and office work involved in surveying unsurveyed lands granted to the Atlantic & Pacific Railroad Company, within the primary limits of said grant in four townships, the appellant's contention being, first, that it is not liable to the payment of any part of the cost of such survey and, second, that if it is the Secretary's estimate is twice as great as it should be because the survey of these grants will incidentally result in the survey of the alternate sections belonging to the Government.

By the act of July 27, 1866 (14 Stat., 292), provision was made for the incorporation of the Atlantic & Pacific Railroad Company and by the third section of that act, for the purpose of aiding in the construction of the railroad, a grant was made to the company of every alternate section of public land not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of the railroad line, etc. By section 4 it was provided that as fast as twenty-five consecutive miles should be reported completed by Commissioners appointed by the President, patents to the lands granted to the railroad should be issued, and so on as fast as every

twenty-five miles should be completed. Section 6 provided that the President of the United States should cause the land to be surveyed for forty miles in width on both sides of the entire line of said road, after the general route should be fixed and as fast as might be required by the construction of the railroad.

21 The appellant was duly incorporated under the act of March 3, 1897 (29 Stat., 622), and is the lawful successor of the Atlantic & Pacific Railroad Company.

The act of July 31, 1876 (19 Stat., 121), provides that "before any land granted to any railroad company by the United States shall be conveyed to such company, or any person entitled thereto under any of the acts incorporating or relating to said company, unless such company is exempted by law from the payment of such costs, there shall first be paid into the Treasury of the United States the cost of surveying, selecting and conveying the same by the said company or persons in interest." The act of June 25, 1910 (36 Stat., 834), "to enable the Secretary of the Interior to complete the adjustment of land grants made by Congress to aid in the construction of railroads and to subject the lands granted to taxation by states, territories and municipal authorities," provides that "any railroad corporation required by law to pay the costs of surveying, selecting, or conveying any lands granted to such company or corporation * * * is hereby required, within ninety days from demand by the Secretary of the Interior, to deposit in a proper United States depository to the credit of the United States a sum sufficient to pay the cost of surveying, selecting and conveying any of the unsurveyed lands granted to such company or for its use and benefit, under any act of Congress: Provided further, That the Secretary of the Interior shall determine and specify in the notice or demand to such company the amount of the required deposit, and may, in his discretion, demand a sum sufficient to cover the cost of the survey, selection and conveyance of the entire area granted to any company, or for its use and benefit, then unsurveyed, or for such townships or fractional townships as he may prescribe and designate in the notice or demand to such company, as aforesaid." It is further provided that in the event the money deposited by any railroad corporation shall exceed the costs of the survvey, the excess shall be repaid to the depositor; that in the event of the neglect or refusal to make the deposit as aforesaid the rights of the offending party "shall cease and forfeit to the United States; and the Secretary of the Interior shall notify the Attorney General, who shall at once commence proceedings to declare the forfeiture and to restore the lands forfeited to the public domain."

On June 11, 1914, the aforesaid demand for the deposit of $5,500 was made. Appellant protested that the amount demanded should be reduced one-half; that said act of June 25, 1910, "indicated no purpose to increase the call upon the company so as to embrace other than the lands granted to the company, but merely authorized an estimate of this amount, the lands being unsurveyed, in place of the known amount after survey, provided for in the act of 1876." The appellant did not "question the right of the Secretary to estimate the

amount required to meet the costs of the survey of the company's lands in any given township," but insisted that this estimate should "be made in good faith to meet the demands of the grant and no more." The Secretary responded that "it was not the purpose of the Department to require a deposit for the survey of any lands except those granted to the company;" that "it is the judgment of the Department that the public interest requires the immediate survey of the railroad lands in those townships, and that the public interest does not require the survey of the even-numbered sections in those townships;" that "under such circumstances, the Department is clearly of the opinion that the company was properly required to pay the cost of the field and office work involved in the survey of its granted lands, even though it be admitted that the cost to the company would be much less were it deemed proper at this time to direct the survey of all the lands within the townships named."

It is apparent from the foregoing that until the filing of this suit appellant conceded that under said acts of July 31, 1876, and of June 25, 1910, it was liable to pay at least one-half the cost of the survey of the lands in question. It now contends, however, that these acts have no application to these grants. Its rights being no greater than would have been the rights of its predecessor the Atlantic & Pacific Railroad Company, the question is whether the provision of Section 6 of the act of 1866 that the President should cause a survey to be made on each side of the line of said road amounted to an exemption of the company from the payment of the costs of such survey within the meaning of said act of July 31, 1876 (19 Stat., 121). We think this question is determined by the decision of the supreme Court in N. O. Pac. Ry. Co. v. United States, 124 U. S., 125. In that case the surveys had already been made and paid for by the United States prior to the passage of the granting act, which contained a provision that the Secretary of the Interior should cause patents to be issued to the land granted as fast as it should be earned. The court ruled that, there being no express statutory provision exempting the railroad from the payment of the cost of surveying the land, the granting act being merely silent on the subject, the grant fell within the provisions of said act of 1876, "because not within the exemptions contained in that provision." So, here, there being no express statutory provision exempting appellant's predecessor from the payment of the costs of the survey, it fell within the provisions of the act of 1876. Of course, if the provisions of the act of 1876 are applicable to the appellants, so also are the provision of said act of 1910.

A township, as is well known, is square in form, each outer line extending six miles, dividede into thirty-six sections numbered from east to west and the upper tier, from west to east in the next lower tier, and so on, by which arrangement each alternate section has an odd number. In this case the odd-numbered sections belong to appellant, the even-numbered sections to the United States. Appellant does not contend that the cost of the survey and office work will be less than the amount demanded, but that, because the survey will necessarily fix the corners of the Government's sections, the

Secretary has exceeded his authority. The Secretary does not deny that for several years the practice has been for the Government to pay one-half the cost of such a survey. He insists, however, that inasmuch as this land is all within a forest reserve, the public interests do not require a survey of the land remaining to the
22 Government.

Under said act of 1910 it is made the duty of the Secretary to determine the amount which, in his judgment, will be necessary to pay the cost of surveying, selecting and conveying railroad lands. The act not only clothes him with jurisdiction to determine this question, but it imposes upon him the positive duty of making demand upon the particular company affected. In fixing the amount which the appellant should deposit in the present case the Secretary was acting within his jurisdiction, and, unless his decision was arbitrary or capricious, we have no jurisdiction to review it, for is it not a question "whether the decision of the Secretary was right or wrong, but whether a decision of that officer, made in the discharge of a duty imposed by law and involving the exercise of judgment and discretion, may be reviewed by mandamus and he be compelled to retract it, and to give effect to another not his own and not having his approval." Ness v. Fisher, 223 U. S., 683. Or, as was said in Riverside Oil Company v. Hitchcock, 190 U. S., 316, "whether he (the Secretary of the Interior) decided right or wrong is not the question. Having jurisdiction to decide at all, he had necessarily jurisdiction, and it was his duty to decide as he thought the law was, and the courts have no power whatever under those circumstances to review his determination by mandamus or injunction."

We think the Secretary's decision was based upon a possible construction of the act of 1910 and that, therefore, it was not arbitrary or capricious. Ness v. Fisher, 223 U. S., 683, 691. The purpose and scope of his demand is to secure a deposit to defray the cost of surveying and segregating lands granted to appellant. In other words, for reasons which he deems sufficient, he has adopted a literal construction of the statute. Even if we were of the opinion that it would be more equitable for the Government to contribute towards the cost of this survey, there would still be no sufficient foundation for a ruling that the Secretary's decision was arbitrary or capricious, since the statute is susceptible of the construction placed upon it by him.

The decree is affirmed, with costs.

Mr. Justice Van Orsdel dissenting:

I agree with my associates that the act of 1910 applies to defendant company, but I am unable to agree with the holding that the action of the Secretary in requiring the railroad company to pay the whole cost of the survey is not arbitrary and unwarranted under the law.

This is not an instance where the convenient and elastic rule of "possible construction" applies. A "possible construction" can mean no more than a reasonable construction. It can not be construed to cover any arbitrary interpretation an official may choose to place

upon a statute. If the official's construction is such as to confer arbitrary power in the face of the clear commands of the law, it can not be that courts are estopped from granting extraordinary relief. In other words, the expression "possible construction" is certainly not susceptible of an interpretation which will result in an investment of arbitrary power.

The Secretary makes no contention that he is following the law. He admits that he is ignoring the construction heretofore followed by the Department; admits that under the subterfuge adopted the railroad company will be compelled to pay the cost of the entire survey; admits that he has no intention of returning any part of the deposit, except so much as is left after paying the entire cost of the survey; admits that the survey and platting of the railroad land ipso facto establishes the corners and completely surveys and plats the intervening Government sections, and admits that the proposed proceeding may be unauthorized; but attempts to justify his action on the excuse that he has decided that the Government does not desire to survey its land at this time, but concedes in the same breath that in carrying out the proposed scheme the Government will get a complete survey of its lands free of charge. With the completed survey of the railroad lands, the survey of the intervening lands will be equally complete. Hence, to assert in justification of the action here taken that the Government does not desire to survey its lands, when admittedly the subterfuge here adopted indirectly accomplishes that end, amounts to an evasion of the express commands of the law.

If the threatened acts are unauthorized by the act of Congress (which seems to be conceded on all sides), the proceeding, in so far as holding up the railroad company for the full cost of the survey, is totally without legal authority and as void as if no law existed on the subject. If a court of equity is powerless to stay the hands of an official of the Government from perpetrating through the proposed scheme this threatened injury, the guarantee of justice through the agency of the courts becomes a farce, and the citizen is left without protection from the arbitrary and capricious exactions of executive power.

23 April Term, 1915, Monday, April 26th, A. D. 1915.

No. 2763.

THE SANTA FE PACIFIC RAILROAD COMPANY, a Corporation, Appellant,

vs.

FRANKLIN K. LANE, Secretary of the Interior.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged

and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. JUSTICE ROBB,
April 26, 1915.

Mr. Justice Van Orsdel dissenting.

24 In the Court of Appeals of the District of Columbia, Term 1915.

No. 2763.

THE SANTA FE PACIFIC RAILROAD COMPANY, a Corporation, Appellant,
v.
FRANKLIN K. LANE, Secretary of the Interior, Appellee.

Motion for Allowance of Appeal to the Supreme Court of the United States and to Stay Mandate.

Comes now the appellant by its attorneys, and moves the court to allow an appeal to the Supreme Court of the United States to review the decision of this Court herein and to stay mandate; and for cause shows:

I.

That an appeal lies under paragraph 5 of Section 250 of the Judicial Code, for that the validity of the authority to demand of the plaintiffs the payment of any part of the costs for the survey of the lands granted it under the Act of July 27, 1866, 14 Stats., 292, and the Act of March 3, 1897, 29 Stats., 622, as exercised or attempted to be exercised by the defendant, an officer of the United States, in the demand the subject of this suit is drawn in question.

II.

That appeal lies under paragraph 6 of said section of said Code, for that the construction of the Act of July 31, 1876, 19 Stats., 121 as well as the Act of June 25, 1910, 36 Stats., 834, is drawn in question by the defendant, who asserts and relies upon said acts as authority for the demand the subject of this suit.

ALEXANDER BRITTON,
FRANCIS W. CLEMENTS,
Attorneys for Appellants.

(Endorsed:) No. 2763. Santa Fe Pacific R. R., Appellant,
25 vs. Franklin K. Lane, &c. Motion for appeal to Supreme Court U. S. and to stay mandate. Court of Appeals, District of Columbia. Filed May 4, 1915. Henry W. Hodges, Clerk.

26 Tuesday, May 4th, A. D. 1915.

No. 2763.

THE SANTA FE PACIFIC RAILROAD COMPANY, a Corporation, Appellant,
vs.
FRANKLIN K. LANE, Secretary of the Interior.

The motion for the allowance of an appeal to the Supreme Court of the United States, and to stay the mandate, in the above entitled cause, was submitted to the consideration of the Court by Mr. F. W. Clements, of counsel for the appellant, in support of motion.

27 Tuesday, May 4th, A. D. 1915.

No. 2763.

THE SANTA FE PACIFIC RAILROAD COMPANY, a Corporation, Appellant,
vs.
FRANKLIN K. LANE, Secretary of the Interior.

On consideration of the motion for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, It is by the Court this day ordered that said appeal be, and the same is hereby, granted, and the bond to act as supersedeas is fixed at the sum of five hundred dollars.

28 (*Bond on Appeal.*)

Know all Men by these Presents, That we, The Santa Fe Pacific Railroad Company, a corporation, as principal, and National Surety Company, a corporation, as surety, are held and firmly bound unto Franklin K. Lane, Secretary of the Interior, in the full and just sum of five hundred dollars, to be paid to the said Franklin K. Lane, Secretary of the Interior, his certain attorney, executors, administrators, successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 20th day of May, in the year of our Lord one thousand nine hundred and fifteen.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between The Santa Fe Pacific Railroad Company, a corporation, and Franklin K. Lane, Secretary of the Interior, a decree was rendered against the said The Santa Fe Pacific Railroad Company, a corporation, and the said The Santa Fe Pacific Railroad Company, a corporation, having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Franklin K. Lane, Secretary of the Interior, citing and ad-

monishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, That if the said The Santa Fe Pacific Railroad Company, a corporation, shall prosecute said appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE SANTA FE PACIFIC RAILROAD COMPANY, [SEAL.]
BRITTON & GRAY, *Attorneys.*

[Seal of National Surety Company.]

NATIONAL SURETY COMPANY,
By W. H. RONSAVILLE, [SEAL.]
Attorney-in-Fact.

Sealed and delivered in presence of—

——— ———.
——— ———.

Approved by—
SETH SHEPARD,
Justice Court of Appeals of the District of Columbia.

[Endorsed:] No. 2763. Santa Fe Pacific Railroad Co., &c., Appellant, vs. Franklin K. Lane, Secretary of the Interior. Bond on appeal to Supreme Court, U. S. Court of Appeals, District of Columbia. Filed May 21, 1915. Henry W. Hodges, Clerk.

29 UNITED STATES OF AMERICA, *ss:*

To Franklin K. Lane, Secretary of the Interior, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein The Santa Fe Pacific Railroad Company, a corporation, is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 21st day of May, in the year of our Lord one thousand nine hundred and fifteen.

SETH, SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service acknowledged this 21st day of May, 1915.
PRESTON C. WEST,
Counsel for Appellee.

[Endorsed:] Court of Appeals, District of Columbia. Filed May 21, 1915. Henry W. Hodges, Clerk.

30 In the Court of Appeals, District of Columbia.

No. 2763.

THE SANTA FE PACIFIC RAILROAD CO., a Corporation, Appellant,

vs.

FRANKLIN K. LANE, Secretary of the Interior, Appellee.

On Appeal to the Supreme Court of the United States.

Assignment of Errors.

The appellant hereby assigns the following errors in the decision of the Court in the above entitled cause:

I.

The Court erred in holding that the Santa Fe Pacific Railroad Company, by the provisions of the Act of July 31, 1876, 19 Stats., 121, is required to pay the costs of surveying, selecting and conveying the lands granted by the Act of July 27, 1866, 14 Stats., 292.

II.

The Court erred in failing to find that by the provisions of Sections 4 and 6 of the said Act of July 27, 1866, it was made the duty of the President of the United States to cause the lands granted to be surveyed and patented to the company as fast as earned in the construction of the road, and that thereby, the grantee company was specifically relieved from paying such costs.

III.

That the Court erred in failing to find that the Santa Fe Company, if required by said Act of July 31, 1876, to pay any part of the costs of surveying, selecting, and conveying of the lands granted by the Act of July 27, 1866, supra, was only required to make such
31 payment (*a*), after specific sections or parts of sections had been determined to have been granted by said Act, and (*b*), in amount equal to the expense incident to the surveying, selecting and conveying of the specific sections and parts of sections so found to have been granted.

IV.

That the Court erred in finding that the provisions of the Act of June 25, 1910, 36 Stats., 834, are applicable to the grant of July 27, 1866, supra, under which appellant claims.

V.

The Court erred in failing to find that because appellant's right to the lands granted under the Act of July 27, 1866, supra, had become fixed and determined by the location and construction of the road, long prior to the passage of the Act of June 25, 1910, supra, said Act could have no application to appellant's grant under the Act of 1866.

VI.

That the Court erred in failing to find that the Act of July 31, 1876, simply imposed a condition upon the right to obtain a patent to the lands granted, while the Act of June 25, 1910, provided for the forfeiture on failure to advance costs for survey of lands, on the estimate of the Secretary of the Interior, and therefore, conceding that the Act of 1876 applied to appellant's grant, does not follow that the Act of 1910, also applied, as the latter was passed after rights under the grant had become fixed by location and construction of the road, and said last named Act undertakes to impose an entirely new and very burdensome condition upon the title which had attached prior thereto.

VII.

That the Court erred in failing to find that, even if the Act of June 25, 1910, supra, has application to appellant's grant, appellant is liable at the most, for only one-half of the estimated cost for the surveying of the townships named, and that it had, prior to the filing of this action, made due tender of the full amount which
32 might be required of it, under said Act.

VIII.

The Court erred in failing to find that the demand by the defendant covered the entire cost of surveying the entire townships named, including the reserved alternate government or even numbered sections, and was therefore in excess of any authority granted, in direct conflict with the Acts of 1876 and 1910, and therefore illegal and void.

IX.

That the Court erred in holding that, "even if we were of the opinion that it would be more equitable for the Government to contribute towards the cost of this survey, there would still be no sufficient foundation for the ruling that the Secretary's decision was arbitrary or capricious, since the statute is susceptible of the construction placed upon it by him."

X.

The Court erred in failing to find that the uniform administration by the Land Department of both the Acts of July 31, 1876 and

June 25, 1910, prior to the demand herein complained of, required payment under the Act of 1876, only, for the costs of surveying, selecting and conveying of the lands actually conveyed, and under the Act of June 25, 1910, of one-half of the estimated amount for the survey of the township involved, and that the alleged justification for the present demand, namely, the fact that the lands fall within the limits of an existing forest reservation, and for that reason the Government does not desire to survey its lands, amounts to an evasion of the express commands of the law, and is therefore, illegal and void.

XI.

The Court erred in failing to find that the appellee's action with respect to the demand the subject of this action, was not a
33 reasonable construction of the Act of June 25, 1910, and therefore, was an attempt at the exercise of arbitrary power in the face of the clear command of the law.

XII.

That the Court erred in affirming the decree of the Supreme Court of the District, dismissing plaintiff's bill and discharging the rule issued thereon.

XIII.

That the Court erred in failing to grant to the plaintiff relief as against the unlawful, unusual and arbitrary demand of the defendant herein complained of, which clouds the title of the plaintiff to the lands granted it by the Act of July 27, 1866, supra, and Acts amendatory thereof.

Respectfully submitted,

ALEXANDER BRITTON,
EVANS BROWNE,
F. W. CLEMENTS,
Att'ys for the Santa Fe Pacific R. R. Co.

A. A. HOEHLING,
Of Counsel.

(Endorsed:) In the Court of Appeals, District of Columbia. The Santa Fe Pacific Railroad Co., a Corporation, Appellant, vs. Franklin K. Lane, Secretary of the Interior, Appellee. No. 2763. Assignment of Errors. Court of Appeals, District of Columbia. Filed Jun- 1, 1915. Henry W. Hodges, Clerk.

34 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 33 constitute a true copy of the transcript of record and proceedings of said Court of Appeals

in the case of The Santa Fe Pacific Railroad Company, a corporation, Appellant, vs. Franklin K. Lane, Secretary of the Interior. No. 2763, April Term, 1915, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 3rd day of June, A. D. 1915.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia,
By MONCURE BURKE,
Assistant Clerk.

[10-cent United States Internal Revenue Documentary Stamp, canceled by H. W. H., June 8, 1915.]

Endorsed on cover: File No. 24,802. District of Columbia Court of Appeals. Term No. 519. The Santa Fe Pacific Railroad Company, appellant, vs. Franklin K. Lane, Secretary of the Interior. Filed June 17th, 1915. File No. 24,802.